



January 5, 2000

Ms. Judith Hunter
Paralegal
City of Georgetown
113 East 8th Street
P.O. Box 409
Georgetown, Texas 78627-0409

OR2000-0018

Dear Ms. Hunter:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 131068.

The City of Georgetown (the "city") received a request for the Georgetown Police Department's policies, procedures, orders, memoranda and other documents relating to certain 9-1-1 calls and for other information pertaining to a specific 9-1-1 call. You state that you have notified the requestor that he may review the police department's policy and procedure manuals at his convenience and that certain other responsive information is in the custody of the Williamson County District Attorney's office in connection with a criminal prosecution. You have submitted other responsive information for our review. You claim that the information in question is excepted from public disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.103 of the Government Code, as amended by the Seventy-sixth Legislature, provides in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103. Thus, under section 552.103, a governmental body must establish: (1) that litigation is either pending or reasonably anticipated, and (2) that the information in question relates to that litigation. See *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App. – Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App. – Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990). The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, a governmental body must provide this office with “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *Id.* Among other examples, this office has concluded that litigation was reasonably anticipated where the opposing party took the following objective steps toward litigation: (1) filed a complaint with the Equal Employment Opportunity Commission, see Open Records Decision No. 336 (1982); (2) hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, see Open Records Decision No. 346 (1982); and (3) threatened to sue on several occasions and hired an attorney, see Open Records Decision No. 288 (1981). In this instance, the requestor, who is an attorney, states that he is in the process of determining whether to accept or decline representation of the individual who was the subject of the 9-1-1 call to which the responsive information relates. You do not inform us, however, that the city has received any notice of claim, monetary demand, or threat of a lawsuit from either the requestor or the individual whose case is being considered. Although consultation with an attorney indicates the possibility of litigation, we are not persuaded that it constitutes the “concrete evidence” required by section 552.103. See Open Records Decision No. 361 (1983) at 2 (“We do not believe that the single fact that the request was made by an attorney on behalf of a rejected [job] applicant is sufficient to invoke the litigation exception”). Consequently, we conclude that the city may not withhold the information in question from public disclosure under section 552.103 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

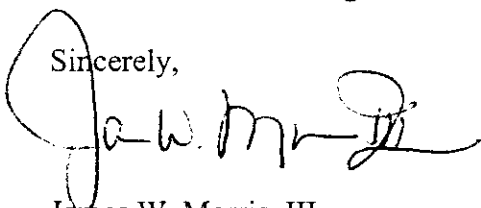
filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive, flowing style with a large initial "J" and a long, sweeping underline.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ch

Ref: ID# 131068

Encl. Submitted documents

cc: Mr. John Judge
Judge & Brim
2525 Wallingwood Drive, Building 14
Austin, Texas 78746
(w/o enclosures)